



July 31, 2003

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th St., SW  
Washington, DC 20554

Re: *Ex parte* presentation in MB Docket No. 02-230, PP Docket No. 00-67, CS  
Docket No. 97-80

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, I write to report *ex parte* meetings in connection with the above-referenced proceedings. On July 28, 2003, Fred von Lohmann, representing the Electronic Frontier Foundation (EFF), met *ex parte* with the following Commissioners and Commission staff:

Commissioner Kathleen Q. Abernathy  
Stacy Robinson (Office of Commissioner Abernathy)  
Elizabeth Drogula (Office of Commissioner Abernathy)

Commissioner Jonathan S. Adelstein  
Johanna Mikes (Office of Commissioner Adelstein)

Jordan Goldstein (Office of Commissioner Copps)

Each of these discussions concerned the proposed broadcast flag solution that is being considered by the Commission in MB Docket 02-230, as well as the proposed cable-CE "plug and play" agreement being considered in PP Docket 00-67/CS 97-80. At the meeting, I distributed the attached discussion outline and article from EE TIMES.

Sincerely,

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**DTV Transition Dockets:  
The Broadcast Flag Mandate and Cable-CE Plug & Play**

**I. Broadcast Flag**

- A. The Purported Problem: *Internet* Redistribution.
- B. Even if We Credit MPAA's Bandwidth and Compression Predictions, the Broadcast Flag Mandate Will Not Fix the Purported Problem.
  - 1. All it takes is **one** leak.
  - 2. And it leaks like a sieve.
    - a) The analog hole.
    - b) The legacy devices hole (DTV tuner cards now \$139).
    - c) The software receivers hole (an enforcement nightmare).
    - d) The cable hole (QAM receivers are easy to build).
    - e) The DVI hole (perfect digital output).
    - f) Set-top box modification hole ([www.169time.com](http://www.169time.com)).
    - g) Retransmission hole (distribute files in raw modulated form).
  - 3. So making the Broadcast Flag effective will require unspecified additional expansive FCC technology regulations and enforcement efforts.
- C. Regulating Innovation.
  - 1. Will harm consumers.
    - a) Imperils future fair uses.
    - b) Stymies current fair uses.
    - c) Obsolescing existing home networking investments.
    - d) What about technologies revoked from Table A?
  - 2. This is the Hollings Bill: innovators are no longer free to build any device that is lawful under the Copyright Act, but must now negotiate with an "inter-industry" group for every new feature.
- D. There are Alternatives.
  - 1. By broadcasting in higher definition, content owners can increase resistance to Internet redistribution.
  - 2. Piecemeal technology regulation is no substitute for a copyright solution, such as compulsory licensing.

## **II. Cable-CE Plug & Play**

1. Preserve the oasis of basic tier compatibility by reaffirming that all cable basic tier services must remain unencrypted.
2. Set functional standards for digital outputs that establish a “floor” of compatibility between consumer electronics devices and cable television, while leaving issues of “content protection” and “business models” for another day.
3. Protect the public by declaring a moratorium on the activation of digital content protection capabilities by cable MSOs until the Commission has completed a proceeding aimed at evaluating whether proposed uses of content protection technologies by MVPDs are in the public interest.
4. Preserve legacy compatibility and a path for innovation by requiring that cable MSOs continue to support high-resolution analog outputs that can neither be “down-rezzed” nor remotely disabled.

MB 02-230 Comments: <http://bpdg.blogs.eff.org/archives/eff-comments.pdf>

MB 02-230 Reply Comments: [http://www.eff.org/IP/Video/HDTV/20030218\\_reply\\_comments.pdf](http://www.eff.org/IP/Video/HDTV/20030218_reply_comments.pdf)

CS 97-80/PP 00-67 Comments: [http://www.eff.org/IP/Video/HDTV/20030328\\_fcc\\_cable-ce\\_comments.php](http://www.eff.org/IP/Video/HDTV/20030328_fcc_cable-ce_comments.php)

CS 97-80/PP 00-67 Reply Comments: [http://www.eff.org/IP/Video/HDTV/20030328\\_fcc\\_cable-ce\\_comments.pdf](http://www.eff.org/IP/Video/HDTV/20030328_fcc_cable-ce_comments.pdf)

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